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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

HOSEA IVAN MALDONADO,

Defendant and Appellant.

B290201

(Los Angeles County
Super. Ct. No. MA061158)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank M. Tavelman, Judge. Affirmed.

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In October 2013, defendant and appellant Hosea Maldonado attempted to leave a Wal-Mart store without paying for \$1,253.43 worth of merchandise. He was charged in count 1 with second degree burglary (Pen. Code¹, § 459) and in count 2 with grand theft of personal property of a value exceeding \$950 (§ 487, subd. (a)). The People further alleged that Maldonado suffered four separate prison priors.

Maldonado pled no contest to count 2 and count 1 was dismissed. The court stayed imposition of a three-year prison term and sentenced Maldonado to three years of formal felony probation. The court also credited Maldonado with 21 actual days in the county jail plus 20 good time credits, for a total of 41 days of time served in the county jail.

The court imposed a \$300 restitution fine (§ 1202.4, subd. (b)); imposed and stayed a \$300 probation revocation restitution fine (§ 1202.44); and imposed a \$40 court operations assessment (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Govt. Code, § 70373), a \$10 crime prevention fine (§ 1202.5), and a \$2 criminal fine surcharge (§ 1465.7). The court also ordered Maldonado to complete 30 days of community labor.

Maldonado was ordered to seek and maintain training, schooling, or employment; maintain a residence approved by his probation officer; keep his probation officer apprised of his work and home addresses and telephone numbers at all times; support his dependents; submit his person and property to search and seizure at any time of day without a warrant, probable cause, or reasonable suspicion; refrain from owning, using, or possessing

¹ All further statutory references are to the Penal Code unless otherwise indicated.

any dangerous or deadly weapons, including firearms; stay away from all Wal-Mart stores; refrain from associating with gang members, affiliates, or associates and stay away from places where such persons congregate; do not own, possess, wear, or otherwise exhibit any clothing or other insignia associated with criminal street gangs; refrain from displaying any hand signs or signals associated with criminal street gangs; refrain from owning, using, or possessing controlled substances or associated paraphernalia; stay away from places where users, buyers, or sellers congregate and refrain from associating with persons known to be controlled substance abuse users or sellers except in an authorized treatment program; submit to periodic controlled substance testing; abstain from the use of all alcoholic beverages; and stay away from places where alcoholic beverages are the chief item of sale. Maldonado stated he understood and accepted the terms and conditions of probation.

In July 2015, the Probation Department filed a report alleging Maldonado failed to submit to drug testing and failed to enroll in community labor. In August 2015, the court found Maldonado preliminarily in violation of probation and issued a bench warrant for his arrest.

The Probation Department filed a second report in April 2018 alleging Maldonado absconded from supervision and was living in Nevada.

On May 18, 2018, the trial court held a hearing at which Maldonado's assigned probation officer testified that Maldonado failed to report to him and absconded from supervision. Maldonado was present and cross-examined the witness through counsel. The trial court found Maldonado in violation of probation for "failing to report and desertion" and sentenced him

to the upper term of three years of incarceration. The court awarded Maldonado credit for 45 actual days in county jail plus 44 days of good time credit, and 41 days of back time credit. The court also imposed the previously stayed \$300 probation revocation fine, and reimposed all prior fines and fees.

Maldonado filed a notice of appeal on May 21, 2018, challenging the probation violation.

We appointed counsel to represent Maldonado on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On September 28, 2018, we advised Maldonado he had 30 days within which to personally submit any contentions or issues he wished us to consider. To date, we have received no response.

Courts have the authority at any time during a term of probation to “revoke, modify, or change [an] order of suspension of imposition or execution of sentence.” (Pen. Code, § 1203.3, subd. (a).) The standard of proof required to establish a probation violation is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439.) The “‘minimum requirements of due process’ for parole revocation hearings . . . are: (1) written notice of claimed violations, (2) disclosure of adverse evidence, (3) the right to confront and cross-examine witnesses, (4) a neutral and detached hearing board, and (5) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.” (*Id.* at p. 441, citing *Morrissey v. Brewer* (1972) 408 U.S. 471, 488–489.)

We have examined the entire record and are satisfied that Maldonado’s counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.